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amount of money sued for, is erroneous as allowing plaintiff to sue in detinue and recover debt.

[Ed. Note.—For other cases, see Detinue, Cent. Dig. § 43; Dec. Dig. § 23.\* 4 Va.-W. Va. Enc. Dig. 644.]

**3. Appeal and Error (§ 1066\*)—Review—Harmless Error.**—In such case, as the evidence was such that the jury might readily have found against plaintiff, the erroneous instruction cannot be held harmless.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4220; Dec. Dig. § 1066; Trial, Cent. Dig. § 558.\* 1 Va.-W. Va. Enc. Dig. 600.]

Error to Law and Chancery Court of City of Roanoke.

Action by H. J. Perrow against the Virginia Land Immigration Bureau and another. There was a judgment for plaintiff, and defendants bring error. Reversed and remanded.

*Johnston & Izard, of Roanoke, for plaintiffs in error.*

*Kime, Fox & McNulty, of Roanoke, for defendant in error.*

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ARONHIME v. LEVINSON.

Sept. 11, 1916.

[89 S. E. 893.]

**1. Partnership (§ 95\*)—Sale of Interest—Duties of Partner.**—A purchasing partner must exercise the utmost good faith, and disclose any information in his possession which may be called for, and disabuse the selling partner of any misapprehension upon which he may act to his detriment.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 142; Dec. Dig. § 95.\* 10 Va.-W. Va. Enc. Dig. 843.]

**2. Partnership (§ 95\*)—Sale of Interest—Setting Aside Sale for Fraud—Burden of Proof.**—Where the purchasing partner proves a completed sale, the law implies, in the absence of further proof, good faith and honesty in the contract, and the selling partner, alleging fraud in the sale of his interest, has the burden of proving it, which never shifts.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 142; Dec. Dig. § 95.\* 10 Va.-W. Va. Enc. Dig. 843.]

Appeal from Law and Chancery Court of City of Roanoke.

Bill by S. Levinson against Gordon L. Aronhime. Decree for complainant, and respondent appeals. Reversed, and bill dismissed.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

*E. W. Poindexter*, of Roanoke, *Peters & Lavinder*, of Bristol, and *A. B. Hunt*, of Roanoke, for appellant.

*C. S. McNulty* and *Hall, Woods & Core*, all of Roanoke, for appellee.

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VIRGINIA & S. W. RY. CO. *v.* HILL.

Sept. 11, 1916.

[89 S. E. 895.]

**1. Master and Servant (§ 247 (5)\*)—Injury—Railroad Conductor—Proximate Cause.**—Where an experienced mine conductor in charge of a train, who would stop where he pleased, took an engine to haul out loaded cars, and, with his brakeman, rode on the pilot beam in front of the engine, in violation of a rule forbidding their riding on the front of the engine, and stepped down upon a step attached to the beam, and, when the step struck a loose rock, fearing he would be thrown under the engine and unable to step off sideways, stepped in front of the slowly moving engine, made one step forward, and was caught between the pilot and the rail and injured, his violation of the rule was the proximate cause of the injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 799; Dec. Dig. § 247 (5).\* 9 Va.-W. Va. Enc. Dig. 710.]

**2. Master and Servant (§ 243 (4)\*)—Violation of Rule—Excuse.**—The showing that, because his brakemen were riding in front of the engine, it was his duty to ride there to direct their movements, and that his crew could do their work more conveniently on the outside than when riding in the cab, as required by the rule, and that a step was missing from one side of the engine, which made ingress and egress to and from the cab on that side more difficult, constituted no excuse for his violation of the rule.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 762; Dec. Dig. § 243 (4).\* 9 Va.-W. Va. Enc. Dig. 710.]

**3. Master and Servant (§ 281 (9)\*)—Rule—Waiver.**—Evidence only tending to show that employees of defendant company rode on the front of the engine "on the sly," and that when caught defendant's officers gave them a "going over about it," did not establish such knowledge on the part of the officers as to the employees' habitual violation of a rule against riding on the front of an engine as to amount to a waiver of or acquiescence in such violation.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 993, 996; Dec. Dig. § 281 (9).\* 9 Va.-W. Va. Enc. Dig. 710.]

**4. Master and Servant (§ 246 (1)\*)—Contributory Negligence—Error in Extremis—Application.**—The doctrine of error in extremis presupposes that the party who invokes it is himself free from fault in

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.